

### **REMARKS**

In the Office Action, the Examiner rejected claims 1-43 and objected to claims 10-14 and 24-28 as including allowable subject matter but being dependent upon a rejected base claim. Applicants thank the Examiner for the indication of allowable subject matter. By this paper, Applicants have amended claims 14-17, 19-22, 28, 29, 42, and 43. It is respectfully submitted that no new matter has been added via these amendments. Upon entry of these amendments, claims 1-43 remain pending in the present application.

Additionally, Applicants would like to point out that the instant application was filed more than six years ago, on October 20, 2003. Since this original filing, prosecution of this matter has included the filing of two separate Appeal Briefs based on deficiencies in the prior art applied by the Examiner without a single continuation filed by Applicants. In both instances, prosecution was reopened prior to the matter being presented to the Board. In effect, it was determined that the rejections by the Examiner were improper and/or deficient.

The current Non-Final Office Action is the most recent attempt by the Examiner to reject the claims of the instant matter. However, as will be further discussed below, it appears that the Examiner has applied art that appears to be even less relevant to the pending claims than the art previously applied by the Examiner. Based on the foregoing amendments and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims. If however, allowance of the claims is not made in a subsequent communication by the Examiner, Applicant respectfully requests an interview with both the Examiner and the Supervisor of the Examiner, as Applicant respectfully submits that the Examiner is continuing to delay prosecution of the instant matter (currently over six years) by continuing to improperly apply prior art references that fail to describe, teach, and/or show all elements of the instant claims.

### **Claim Objections**

In the Office Action, the Examiner objected to claim 42 as including recitations that

failed to have proper antecedent basis. *See* Office Action, page 2. Applicants have amended claim 42. It is respectfully submitted that the amendment to claim 42 obviates the objection to claim 42. Accordingly, Applicants respectfully request withdrawal of the objection to claim 42.

**Claim Rejections under 35 U.S.C. § 103(a)**

In the Office Action, the Examiner rejected claims 1-9, 15-23, and 29-43 under 35 U.S.C. § 103(a) as unpatentable over Kaashoek et al., U.S. Patent No. 7,278,159 (hereinafter “Kaashoek”), in view of Barrett et al., U.S. Patent No. 7,032,023 (hereinafter “Barrett”). Specifically, with regard to independent claims 1, 29, and 43, the Examiner stated in relevant part:

Considering Claims 1 and 43...Kaashoek does not explicitly disclose during a first time interval, comparing (a) identities of destination hosts identified in requests to send data from the first hosts and (b) identifies of destination hosts identified in the record.

Barrett discloses during a first time interval, comparing (a) identities of destination hosts identified in request to send data from the first host and (b) identities of destination hosts identified in the record (column 16- lines 26-45).

Office Action, pages 3-4.

Considering Claim 29...Kaashoek does not explicitly disclose over the course of a first time interval, comparing identities of destination hosts monitored during the first time interval with destination hosts in a record.

Barrett discloses over the course of a first time interval, comparing identities of destination hosts monitored during the first time interval with the destination hosts in a record (column 16- lines 26-45).

Office Action, pages 4-5.

Applicants respectfully traverse this rejection. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). However, it is not enough to show that all the elements exist in the prior art since a claimed invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). It is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* Specifically, there must be some articulated reasoning with a rational underpinning to support a conclusion of obviousness; a conclusory statement will not suffice. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Indeed, the factual inquiry determining whether to combine references must be thorough and searching, and it must be based on *objective evidence of record*. *In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002).

#### ***Omitted Features of Independent Claims 1 and 43***

Kaashoek in view of Barrett fails to teach each element of independent claims 1 and 43. Independent claims 1 and 43 recite, *inter alia*, “establishing a record which is at least indicative of identities of destination hosts within the network to whom data has been sent by the first host; during a first time interval, comparing (a) identities of destination hosts identified in requests to send data from the first host and (b) identities of destination hosts identified in the record.” (Emphasis added.)

Accordingly, independent claims 1 and 43 recite establishing a record “indicative of identities of destination hosts within the network to whom data has been sent by the first host” and comparing identities of destination hosts “identified in requests to send data from the first host” and “identified in the record.” As noted above, the Examiner admitted that Kaashoek fails

to teach “comparing (a) identities of destination hosts identified in requests to send data from the first host and (b) identities of destination hosts identified in the record,” as recited in independent claims 1 and 43. *See* Office Action, page 4. To overcome this admitted deficiency of Kaashoek, the Examiner has applied the teachings of Barrett. *See id.* Applicants respectfully submit that Barrett fails to overcome the admitted deficiencies of Kaashoek with respect to independent claims 1 and 43.

The Examiner cited Barrett (*see* Barrett, col. 16, lines 26-45) as teaching during a first time interval, comparing (a) identities of destination hosts identified in requests to send data from the first host and (b) identities of destination hosts identified in the record, as recited in independent claims 1 and 43. *See* Office Action, page 4. It appears that the cited portion of Barrett teaches a method of inhibiting a subscriber's ability to communicate electronic messages. *See* Barrett, col. 16, lines 26-27. Specifically, the method taught by Barrett appears to include accessing indicia of multiple electronic messages sent by one or more subscribers during a period of time, counting the number of electronic messages that are sent by a subscriber during the period of time, determining, based on results obtained when counting, whether more than a threshold number of electronic messages are sent by the subscriber during the period of time, and inhibiting the subscriber's ability to communicate electronic messages conditioned on whether more than the threshold number of electronic messages is sent by the subscriber during the period of time. *See* Barrett, col. 16, lines 28-41. This method taught by Barrett further teaches determining that the subscriber is sending SPAM based on results obtained when counting and tracking the subscriber as a result of determining that the subscriber is sending SPAM. *See* Barrett, col. 16, lines 42-45.

Thus, while it appears that the cited portion of Barrett generally teaches counting the number of electronic messages sent by a user and taking various actions if the number of messages is greater than a threshold, there does not appear to be any teaching in the cited portion of Barrett of any comparison step, let alone “comparing (a) identities of destination hosts

identified in requests to send data from the first host and (b) identities of destination hosts identified in the record,” as recited in independent claims 1 and 43. Moreover, while Barrett does appear to count the number of messages transmitted by a user (*see* Barrett, col. 16, lines 32-33), there does not appear to be any teaching in Barrett of utilizing “identities of destination hosts identified in requests to send data from the first host” or “identities of destination hosts identified in the record,” as recited in independent claims 1 and 43. That is, Barrett fails to teach utilizing identities of destination hosts identified in requests to send data from the first host or identities of destination hosts identified in the record in any manner, let alone in a comparison, as recited in independent claims 1 and 43. Accordingly, the cited portions of Barrett fail to overcome the admitted deficiencies of Kaashoek with respect to independent claims 1 and 43.

Therefore, for at least the reasons set forth above, none of the cited references, taken alone or in hypothetical combination, teach all elements of independent claims 1 and 43. As such, Applicants respectfully request withdrawal of the rejection and allowance of independent claims 1 and 43, as well as all claims depending therefrom.

#### ***Omitted Features of Independent Claim 29***

Kaashoek in view of Barrett fails to teach each element of independent claim 29. Independent claim 29 recites, *inter alia*, “over the course of a first time interval, monitoring creation of sockets within the first host to identify destination hosts identified therein” and “comparing identities of destination hosts monitored during the first time interval with destination host identities in a record.” (Emphasis added.)

The Examiner admitted that Kaashoek fails to teach “over the course of a first time interval, monitoring creation of sockets within the first host to identify destination hosts identified therein” and “comparing identities of destination hosts monitored during the first time interval with destination host identities in a record,” as recited in independent claim 29. *See* Office Action, page 4. To overcome this admitted deficiency of Kaashoek, the Examiner has

applied the teachings of Barrett. *See* Office Action, page 5. Applicants respectfully submit that Barrett fails to overcome the admitted deficiencies of Kaashoek with respect to independent claim 29.

Similar to the rejection of independent claims 1 and 43, the Examiner cited Barrett (*see* Barrett, col. 16, lines 26-45) as teaching over the course of a first time interval “monitoring creation of sockets within the first host to identify destination hosts identified therein” and “comparing identities of destination hosts monitored during the first time interval with destination host identities in a record,” as recited in independent claim 29. *See* Office Action, page 5. It appears that the cited portion of Barrett teaches a method of inhibiting a subscriber's ability to communicate electronic messages. *See* Barrett, col. 16, lines 26-27. Specifically, the method taught by Barrett appears to include accessing indicia of multiple electronic messages sent by one or more subscribers during a period of time, counting the number of electronic messages that are sent by a subscriber during the period of time, determining, based on results obtained when counting, whether more than a threshold number of electronic messages are sent by the subscriber during the period of time, and inhibiting the subscriber's ability to communicate electronic messages conditioned on whether more than the threshold number of electronic messages is sent by the subscriber during the period of time. *See* Barrett, col. 16, lines 28-41. This method taught by Barrett further teaches determining that the subscriber is sending SPAM based on results obtained when counting and tracking the subscriber as a result of determining that the subscriber is sending SPAM. *See* Barrett, col. 16, lines 42-45.

Thus, while it appears that the cited portion of Barrett generally teaches counting the number of electronic messages sent by a user and taking various actions if the number of messages is greater than a threshold, there does not appear to be any teaching in the cited portion of Barrett of any comparison step, let alone “comparing identities of destination hosts monitored during the first time interval with destination host identities in a record,” as recited in independent claim 29. Moreover, while Barrett does appear to count the number of messages

transmitted by a user (*see* Barrett, col. 16, lines 32-33), there does not appear to be any teaching in Barrett of utilizing “identities of destination hosts monitored during the first time interval” or “destination host identities in a record,” as recited in independent claim 29. That is, Barrett fails to teach utilizing identities of destination hosts monitored during the first time interval or identities of destination hosts identified in the record in any manner, let alone in a comparison, as recited in independent claim 29. Accordingly, the cited portions of Barrett fail to overcome the admitted deficiencies of Kaashoek with respect to independent claim 29.

Therefore, for at least the reasons set forth above, none of the cited references, taken alone or in hypothetical combination, teach all elements of independent claim 29. As such, Applicants respectfully request withdrawal of the rejection and allowance of independent claim 29, as well as all claims depending therefrom.

**Conclusion**

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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